IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

V.A.T. Appeal No. 2 of 2007
DATE OF DECISION: 16.7.2007

M/s Suraj Motor Co.

…Appellant

Versus

State of Punjab and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Ramneek Vasudeva, Advocate,
for the Appellant.

JUDGMENT

M.M. KUMAR, J.

This appeal filed under Section 68(1) of the Punjab Value Added Tax Act, 2005 (for brevity, 'the Act'), is directed against order dated 14.11.2006/28.11.2006, passed by the Value Added Tax Tribunal (Punjab) (for brevity, 'the Tribunal'), in Appeal No. 35 of 2006-07 (VAT). The appellant is a registered dealer under the Act, engaged in the business of sale and purchase of various goods including electrical and motor parts. It holds RC No. 0318114775 with the Assessing Authority, Patiala, with its head office at Manimajra. It is claimed that the appellant has its branches at Jammu & Kashmir and Himachal Pradesh and that it is consignment agent for M/s Phoenix Lamps Limited, Noida. A copy

of the consignee agreement has been placed on record as Annexure A-1.

On 29.7.2005, a vehicle bearing Registration No. CH-03-N-0403, carrying motor parts from Zirakpur to Panchkula was intercepted and checked by the Excise and Taxation Officer Mobile Wing, Chandigarh, alongwith his supporting staff under Section 51 of the Act. The driver of the vehicle produced some documents and on scrutiny it was observed that the goods were not covered with proper and genuine documents. Accordingly, the appellant was called upon to appear before the Officer Incharge. After due contest, the Assistant Excise and Taxation Commissioner Mobile Wing, Chandigarh, vide his order dated 12.8.2005, imposed a penalty of Rs. 1,39,879/-, which is 50% of the total value of the goods as provided by Section 51(7)(c) of the Act.

The appellant filed an appeal against the aforementioned order before the Joint Director (Enforcement), Patiala Division, Patiala. The appeal was dismissed by observing that Section 51(2) of the Act requires that goods under transportation must be accompanied by proper and genuine documents whereas no bills of sale in the present case were produced at the time of checking. The consignment was being carried without documents. It was further held that avoidance of furnishing of documents created strong suspicion regarding genuineness of the transaction and that the documents produced lateron after detection could not be considered. Accordingly, the penalty imposed by the Assistant Excise and Taxation Commissioner, vide his order dated 12.8.2005, was upheld and the appeal of the appellant was dismissed on 31.1.2006 (P-10).

On further appeal to the Tribunal, the view taken by the Assistant Excise and Taxation Commissioner was upheld by observing as under:-

> " From the record, it is quite evident that the vehicle of the appellant company carrying taxable goods was intercepted while leaving the limit of Punjab State at the exit point of Zirakpur. At that time on enquiry, the driver of the vehicle could not produce the relevant documents covering the goods. The subsequent production of the documents by the company, in my view, had been rightly not taken note of. No plausible explanation was furnished by the driver of the vehicle for not carrying the relevant documents with him. He in his statement, did not even disclosed that my mistake by carried documents pertaining to the stock transfer of the goods. Therefore, obviously the gods were being transported by the appellant company without valid and proper documents.
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> The subsequent production of the documents by the appellant company rightly raised doubt in the minds of the authorities below that the same were not genuine. The goods were initially moved by the appellant from Chandigarh to Zirakpur by showing the same as stock transfer. But strangely enough those very goods were being brought back for delivery to the courier for onward transmission of the various dealers within the State of Punjab. Prma facie, there was inter state sale even at the

first stage, but was camouflaged as stock transfer transactions, to avoid tax. The alleged stock transfer was not at all even required, when the goods were to be again brought back for deliver to the courier. The goods could be directly delivered to the courier from Chandigarh instead of first taking into Zirakpur and then bring it back. After learning about the detention of goods, the entries in the ledger and preparation of the relevant documents could easily to be managed by the appellant company. There is nothing on record to prove if any orders were placed by the so called dealers with the appellant company for those goods. The subsequent reflection of the transaction in its own books of accounts by the company, is a simple creation of evidence in its own favour and as such in the eyes of law does not carry any evidential value."

Mr. Ramneek Vasudeva, learned counsel for the appellant has submitted that the following substantial question of law would arise for our determination:-

"Whether penalty under Section 51(7) of Punjab Value Added Tax Act, 2005 was rightly imposed on facts and in the circumstances of the case?"

According to the learned counsel, the penalty under the provisions of Section 51(7) of the Act cannot be considered automatic and the dealer is required to be afforded an opportunity of hearing. It is only after the aforementioned procedure that a finding can be recorded with regard to the intention to evade tax on the part of the

dealer. He has maintained that the documents produced albeit later cannot be brushed aside and those documents were not forged. He has submitted that the entries in the books of account are genuine and should have been accepted by the Assistant Excise and Taxation Commissioner.

Having heard learned counsel we are of the considered view that no interference of this Court would be warranted as no question of law much less a substantial question of law would arise within the meaning of Section 68(3) and (4) of the Act. A perusal of the order passed by the Tribunal shows that opportunity of hearing was granted to the appellant and one Shri Inder Dev Verma belonging to appellant had appeared. The penalty under Section 51(7) of the Act has been imposed after due procedure. Moreover, there are firm findings of fact holding that on questioning the driver of the vehicle could not produce relevant documents in respect of those goods which were being carried and no plausible explanation was furnished by him. In his statement he did not even disclose that on account of mistake he has not been able to carry the documents pertaining to the stock transfer of the goods. The subsequent production of documents by the appellant has been considered doubtful for the reason that the goods were initially moved by the appellant from Manimajra to Zirakpur by showing the same as stock transfer, which were brought back for delivery to the courier for onward transmission to various dealers within the State of Punjab. The Tribunal has held that it was prima facie inter-state sale. Even at the first stage, it was camouflage as stock transfer to avoid tax. It was after learning about the detention of the goods that entries in the ledger and preparation of

relevant documents could be manipulated by the appellant because nothing was placed on record to prove if any orders were placed with the appellant by the so called dealers for supply of those goods. It is on the basis of the aforementioned premise that the Tribunal has concluded that entries by the appellant reflecting transaction in its books of accounts is creation of evidence in its own favour and the same did not carry any evidentiary value because it could be created any time later on. Once the aforementioned findings of fact have been recorded then it has to be concluded that no substantial question of law would arise. Even otherwise, due procedure of law has been followed. We are further of the view that it is mandatory for a vehicle carrying the goods to be accompanied by the sale bills or delivery challan. In the absence of such documents and in the absence of any plausible explanation, it may not be unwarranted for the authorities to infer that there was intention to evade tax.

In view of the above, the appeal fails and the same is dismissed summarily.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

July 16, 2007
Pkapoor